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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,622	07/05/2007	Lorrene Bayon	979-253	3107
39600 7590 05/04/2010 SOFFER & HAROUN LLP. 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017				
EXAMINER				
MOORE, MARGARET G				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
05/04/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/591,622

**Applicant(s)**

BAYON ET AL.

**Examiner**

Margaret G. Moore

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 to 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 12 to 17, 20 is/are rejected.
- 7) ☒ Claim(s) 3 to 11, 18, 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 12 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchnick et al.

Mitchnick et al. teach conductive polymers containing zinc oxide particles. The zinc oxide particles can be undoped (see the bottom of column 3). See also column 12, line 4 and on, which prepares a zinc oxide from 99.81% pure ZnCl. This meets the claimed requirement of less than 3% by wt. of metal oxide traces. This also meets the requirement of a homogeneous powder. In this manner claim 1 is anticipated by the teachings of Mitchnick et al.

The properties of claims 12 and 20 are properties that will be inherently associated with the claimed material. Products of identical chemical composition can not have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. If applicants are of the position that the prior art does not, in fact, possess the same properties as the claimed composition, the claimed composition should be amended to distinguish itself from the prior art.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 13 to 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchnick et al.

Mitchnick et al. don't specifically teach a less than 99.8 wt% pure zinc oxide, but as noted above column 12 teaches the preparation of zinc oxide from a 99.81% pure ZnCl. From this one would expect that the final zinc oxide will have a purity of about 99.81%. A prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. In this manner claim 2 is rendered obvious.

For claims 13 to 17, the Examiner notes that Mitchnick et al. do not specifically teach these products but indicates that the compositions therein can be used in devices that accumulate static electrical charges. See the bottom of column 1 through column 2. As such the skilled artisan would have found any of these claimed devices to have been an obvious use of the composition of Mitchnick et al., taking advantage of the benefits and properties thereof. See also column 7, lines 35 and on.

5. Claims 3 to 11, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The above rejections are maintained from the previous office action. Applicants' response has been considered but is not persuasive in establishing novelty and/or unobviousness for the rejected claims.

Applicants state that the reference does not teach or suggest that the obtained filler includes at least 97 wt% zinc oxide as a homogeneous powder and less than 3 wt% by weight of at least one metal oxide as traces. The zinc used to prepare the zinc oxide 99.81 % pure. Since there is no other metal source the Examiner doesn't see how one can arrive at more than 3 wt% metal oxide trace. Applicants have not indicated how the filler in Mitchnick et al. differs from that in the claimed material.

Applicants also state that the reference does not disclose that the polymer matrix comprises a non linear filler having non linear electric resistance properties. The filler in Mitchnick et al. is compositionally the same as that claimed. Since non-linear electric resistance property is associated with the particle and since the particles in the prior art

and the claims appear to be the same, the properties would have to be present in the material of Mitchnick et al. Applicants' response states that the claimed matrix comprises a non linear filler which provides non linear properties. As such it would be the corresponding, comparable filler in the prior art that provides the non linear properties.

Applicants' response merely argues that the limitations are not present but does not provide any elaboration beyond that to emphasize any differences. Since the Examiner does not see any differences, this rejection is maintained.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday and Wednesday to Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Margaret G. Moore/  
Primary Examiner, Art Unit 1796

mgm  
4/30/10